



DEPARTMENT OF THE NAVY
BOARD FOR CORRECTION OF NAVAL RECORDS
2 NAVY ANNEX
WASHINGTON DC 20370-5100

BJG
Docket No: 2114-00
20 April 2000

CWC [REDACTED] II USMC
[REDACTED]

Dear Chief Warrant [REDACTED]

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 20 April 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the report of the Headquarters Marine Corps Performance Evaluation Review Board (PERB), dated 17 March 2000, a copy of which is attached.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, the Board substantially concurred with the comments contained in the report of the PERB. Accordingly, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official records.

Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosure



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

IN REPLY REFER TO:
1610
MMER/PERB
17 MAR 2000

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)
ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF CWO-4
[REDACTED] USMC

Ref: (a) CWO [REDACTED] DD Form 149 of 30 Aug 99
(b) MCO P1610.7D w/Ch 1-4

Encl: (1) Completed Fitness Report 980401 to 980629 (TR)

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 17 November 1999 to consider CWO-[REDACTED] petition contained in reference (a). Removal of the fitness report for the period 980401 to 980629 (TR) was requested. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner contends the report was not prepared per the guidance contained in reference (b). He also argues that a preliminary inquiry conducted by the Reporting Senior not only represents an inherent conflict, but does not support either his or the Reviewing Officer's allegations that he violated the Memorandum of Understanding (MOU) between the Naval Criminal Investigative Service (NCIS) and the Criminal Investigation Division (CID). To support his appeal, the petitioner furnishes his own statement, a copy of the challenged fitness report, and other documentary material which he believes supports his case.

3. In its proceedings, the PERB concluded that, with one minor exception, the report is administratively correct and procedurally complete as written and filed. The following is offered as relevant:

a. When the Board first considered reference (a), they noted serious discrepancies between the dates of the petitioner's rebuttals and the comments provided by the Reviewing Officer and Third Sighting Officer. Specifically, the petitioner's rebuttal (dated 980804) appears to have been prepared subsequent to the Reviewing Officer's adjudication (980727). Additionally, the petitioner's rebuttal to the Reviewing Officer's comments (dated 981023) was prepared subsequent to the General Officer Sighting by Brigadier General [REDACTED] (981009). To alleviate any confusion on this issue, the Board directed return of the report to the

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[REDACTED] C

Reviewing Officer for clarification, followed by an additional General Officer Sighting by Brigadier General [REDACTED]. These actions have been accomplished, with no indication of any unresolved factual differences. Succinctly stated, the petitioner has been afforded every opportunity to state his case.

b. It is clear from the comments made by Major [REDACTED] and Lieutenant Colonel [REDACTED] that both officers had valid observations and opinions as to the petitioner's overall billet performance and professional conduct. Neither officer's observation appears to have been solely reliant on Major [REDACTED] preliminary inquiry, a fact that did not disqualify him from functioning as the petitioner's Reporting Senior. Major [REDACTED]'s honesty and integrity are not presumed to be compromised simply because he examined the facts surrounding the petitioner's professional conduct; nor does reference (b) call for such disqualification.

c. Notwithstanding the data furnished with reference (a), there appears to be no evidence that the reporting officials lacked objectivity or fairness when evaluating the petitioner's performance/conduct. In fact, the statements gathered during the inquiry (provided at enclosure (6) to reference (a)) clearly show his disdain for NCIS and point, in part, to a source of the conflict that precipitated his relief for cause.

4. The Board's opinion, based on deliberation and secret ballot vote, is that the contested fitness report, as reflected in the enclosure, should remain a part [REDACTED] official military record.

5. The case is forwarded for final action [REDACTED]

[REDACTED]
Colonel, U.S. Marine Corps
Deputy Director
Personnel Management Division
Manpower and Reserve Affairs
Department
By direction of the Commandant
of the Marine Corps